Criminal Justice in Islam



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A BOOK FROM
Encyclopedia of Islamic
Jurisprudence Concerning Muslim Women

دار السلام
DARUSSALAM

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Published By: Darussalam Publishers

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Crimes and Rulings Pertaining to Them

Crime against a Person

What is considered a crime against a person?

Committing crime against a person involves transgressing against him by killing him, causing damage to parts of his body or injuring him.

What is its ruling?

It is forbidden to kill an innocent soul or to cause damage to limbs, or to cause any other bodily harm to another person. There is no sin, after disbelief in Allah, greater than killing a Muslim. Allah (SWT) says,

﴿وَمَن يَقْتُلْ مُؤْمِنًا مُّتَعَمِّدًا فَجَزَآؤُهُۥ جَهَنَّمُ خَـٰلِدًا فِيهَا وَغَضِبَ ٱللَّهُ عَلَيْهِ وَلَعَنَهُۥ وَأَعَدَّ لَهُۥ عَذَابًا عَظِيمًا﴾

And whoever kills a believer intentionally, his recompense is Hell to abide therein; and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him." (An Nisa 4:93)

The Messenger of Allah (Peace and Blessings of Allah be upon him) said, "The cases which will be decided first (on the Day of Resurrection) will be the cases of blood-shedding." (Recorded by Al-Bukhari and Muslim on the authority of `Abdullah bin Mas`ud - may Allah be pleased with him)

What are the types of crimes committed against a soul?

They are of three types:

1. Premeditated crime: This is when a person intentionally kills a Muslim or causes him harm by hitting him with an iron rod, a stick or a rock, or by pushing him down from a high place, or drowning him, setting him ablaze, suffocating him, or poisoning him; or when he intentionally causes damage to his limbs or inflicts a bodily injury on him.

The ruling concerning this type of crime is that Qisas (law of requital) must be implemented on the criminal. This is due to Allah's injunction:

﴿وَكَتَبْنَا عَلَيْهِمْ فِيهَآ أَنَّ ٱلنَّفْسَ بِٱلنَّفْسِ وَٱلْعَيْنَ بِٱلْعَيْنِ وَٱلْأَنفَ بِٱلْأَنفِ وَٱلْأُذُنَ بِٱلْأُذُنِ وَٱلسِّنَّ بِٱلسِّنِّ وَٱلْجُرُوحَ قِصَاصٌ﴾

And We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." (Al Maidah 5:45)

Al-Bukhari and Muslim recorded on the authority of Abu Hurayrah - may Allah be pleased with him - that the Messenger of Allah (Peace and Blessings of Allah be upon him) said, "He whose relative is murdered has the option either to accept a compensation for it or to retaliate."

2. Unpremeditated crime or manslaughter: That is when a person mistakenly killed or caused harm to another without intending to do so, like hitting him with a stick that could not have normally caused death or beating him with his hand or giving him a head butting or pushing him into a little water that could not have normally caused drowning or shouting at him or threatening him with death and he died as a result of such threat.

The ruling concerning this kind of crime is that the accused must pay diyah (compensation) to the relatives of the victim. This is due to Allah's injunction,

﴿وَمَن قَتَلَ مُؤۡمِنًا خَطَـًٔا فَتَحۡرِيرُ رَقَبَةٖ مُّؤۡمِنَةٖ وَدِيَةٞ مُّسَلَّمَةٌ إِلَىٰٓ أَهۡلِهِۦٓ إِلَّآ أَن يَصَّدَّقُواْۚ﴾

And whosoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (blood money, i.e. Diya) be given to the deceased's family, unless they remit it." (An Nisa 4:92)

3. Mistake: This is when a Muslim carries out what is absolutely lawful such as shooting or hunting or slicing the meat of an animal and suddenly the tool being used mistakenly flies off his hand and causes injury or death to another person.

The ruling concerning this type is the same as that of the second type. The exception is that the compensation should be less and he is not considered a criminal as opposed to the case of the accused of manslaughter who is regarded as sinful and upon whom heavy compensation must be imposed.

Rulings Concerning Crimes

What are the conditions that make Qisas mandatory?

It is not compulsory to apply Qisas in a case involving killing, causing damage to limbs or causing bodily injury except with the following conditions:

1. The killed person must be someone whose blood is inviolable. If he is a married person who has committed adultery or an apostate or a disbeliever, then Qisas should not be applied, for the blood of none of these is inviolable due to their crimes.

2. The killer must be legally obligated by being an adult and sane. If the killer is insane or a minor, there should not be any Qisas, because he is not legally obligated. This is due to the statement of Allah's Messenger “The pen is raised from (the book of deeds) of three: the sleeper until he awakes, the child until he becomes a young man, and the insane until he regains his sanity.” (Recorded by At-Tirmidhi)

3. The victim should be at the same level with the killer as far as religion, freedom and bondage are concerned. For, no Muslim should be killed for killing a disbeliever and no free person should be killed for killing a bondman. The Messenger of Allah (Peace and Blessings of Allah be upon him) said, “No Muslim should be killed in requital for killing a disbeliever.” (Recorded by Ahmad and Ibn Majah)

As for a bondman, he is like a valued commodity; so he should rather be valued and his master is compensated accordingly.

4. The killer should not be the father, mother, grandfather or grandmother of the victim. This is due to the Hadith recorded by Ahmad, At-Tirmidhi and others on the authority of Abdullah bin `Abbas - may Allah be pleased with him and his father - that the Messenger of Allah (Peace and Blessings of Allah be upon him) said, “No parent should be killed for killing his (or her) child.”

What are the conditions for carrying out the Qisas?

The person who is entitled to Qisas cannot fully receive his entitlement to Qisas without these three conditions:

1. The person entitled to this right must be a legally obligated Muslim. If he is a minor or an insane person, the accused is detained until the minor attains the age of maturity and the insane is cured. Then each of them can decide to have the Qisas, take compensation or forgive the accused. Some of the Companions - may Allah be pleased with them - are reported to have subscribed to this opinion.

2. The relatives of the victim must be unanimous on getting the Qisas implemented. If some of them forgave the accused, then Qisas cannot be implemented. As for those who did not forgive, then they could be paid compensation.

3. It should be ensured that while the Qisas is being implemented, the injury being inflicted in retaliation is in exact proportion to that inflicted by the accused. It should also be ensured that no one other than the killer is killed. If the killer is a pregnant woman, implementation of the Qisas on her should be delayed until after she delivers her baby.

4. Implementation of the Qisas should be in the presence of the ruler or his deputy to ensure that no injustice or transgression is done.

5. It should be carried out with a sharp object.

Can a Muslim who has a right to Qisas be asked to accept compensation or forgive the accused?

Yes, he can be asked to choose to between accepting compensation and forgiving the accused. This is as mentioned,

﴿فَمَنْ عُفِيَ لَهُۥ مِنْ أَخِيهِ شَيْءٌ فَٱتِّبَاعٌۢ بِٱلْمَعْرُوفِ وَأَدَآءٌ إِلَيْهِ بِإِحْسَٰنٍ﴾

But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood-money, then adhering to it with fairness and payment of the blood-money, to the heir should be made in fairness." (Al Baqarah 2:178)

Allah (SWT) also said,

﴿فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُۥ عَلَى ٱللَّهِ﴾

But whoever forgives and makes reconciliation, his reward is with Allah." (Al-Shura) 42:40)

The Prophet said, "And if somebody is killed, then his closest relative has the right to choose one of the two: the blood money (Diyah) or retaliation by having the killer killed." (Recorded by Al-Bukhari and Muslim on the authority of Abu Hurayrah - may Allah be pleased with him)

What is the ruling concerning the person who chooses Diyyah?

If a victim or his relative (in case of murder) chooses to have compensation, then he has no right to demand for implementation of Qisas. If he demands for Qisas after that, he should not be allowed to have it implemented. If he proceeds on retaliation by killing the accused, he also should be killed in retaliation. But if the first choice he makes is retaliation, he can change his mind and accept compensation.

What is the ruling if the killer died before Qisas could be implemented on him?

If the killer died, the only option left for the relatives of the killed is to get compensation (or forgo it) because; it is not possible to implement the Qisas on him. And it is not permissible in any circumstances to implement the Qisas on other than the killer. Allah (SWT) says,

﴿وَمَن قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِۦ سُلْطَٰنًا فَلَا يُسْرِف فِّى
ٱلْقَتْلِ إِنَّهُۥ كَانَ مَنصُورًا﴾

And whoever is killed wrongfully (Mazluman - intentionally with hostility and oppression and not by mistake), We have given his heir the authority [to demand Qisas - Law of Equality in punishment - or to forgive, or to take Diyah (blood money)] But let him not exceed limits in the matter of taking life (i.e. he should not kill except the killer). Verily, he is helped (by the Islamic law)." (Al isra 17:33)

What is the ruling, concerning making atonement for killing a soul?

It is compulsory to make atonement for manslaughter or any killing that happened by mistake whether the killed is a fetus, an old person, a free person or a bondman. The atonement is to set a Muslim slave free; if that is not found, then one must observe fasting for two consecutive months. This is due to Allah's statement,

﴿وَتَحۡرِيرُ رَقَبَةٖ مُّؤۡمِنَةٖۖ فَمَن لَّمۡ يَجِدۡ فَصِيَامُ
شَهۡرَيۡنِ مُتَتَابِعَيۡنِ تَوۡبَةٗ مِّنَ ٱللَّهِۗ وَكَانَ ٱللَّهُ عَلِيمًا
حَكِيمًا﴾

And whoso finds this (the penance of freeing a slave) beyond his means, he must fast for two consecutive months in order to seek repentance from Allah. And Allah is Ever All-Knowing, All-Wise." (An Nisa 4:92)

Crimes Committed on Limbs

What is the crime committed on limbs?

This is when a person transgresses against another, leading to the latter's eyes being gorged out or his leg being broken or his hand getting cut off.

What is the ruling concerning this kind of crime?

If the perpetrator intentionally committed this crime, and he is not a parent of the victim, and the victim is on the same level with the perpetrator in terms of Islam and freedom, then Qisas is implemented on the latter in the same manner. That is due to Allah's statement,

﴿وَٱلۡجُرُوحَ قِصَاصٞۚ﴾

"And wounds equal for equal". (Al Maidah 5:45)

The perpetrator can only escape the retaliation if the victim agrees to have compensation or forgoes it.

What are the conditions for applying Qisas concerning inflicted injuries?

The conditions are:

1. There must be assurance that the retaliation does not lead to inflicting more harm; if there is no such assurance, then retaliation should not be implemented.

2. There must be assurance that the retaliation is possible; if it is not possible, then compensation is resorted to.

3. The part of the body to be cut off in retaliation should be the equivalent of the part cut off in the crime; therefore, no right hand should be cut off in retaliation for a left hand or a hand for a leg or an extra finger for a primary finger.

4. The two parts must be equal in terms of healthiness and soundness; therefore, a paralyzed hand should not be cut off for a healthy one or blind eye should not be gorged out for a healthy one.

5. If the injury is in the head or face, there should not be any Qisas in this case, unless if it ensured that it will not reach the bone. Any injury that could not be avenged without causing greater harm should only be compensated for.

Must a group of people be killed in retaliation for killing just one person?

Yes, if a murder is jointly committed by a group of people, they must all be killed in retaliation. The same rule applies if they jointly inflict bodily harm on one person. Malik recorded in Al-Muwatta on the authority of Sa'eed bin al-Musayyab that `Umar bin al-Khattab - may Allah be pleased with him - killed five or seven people for one man whom they had killed secretly by trickery. `Umar then said, "Had all the people of Sana joined forces against him, I would have killed them all."

If the inflicted injury spread from the injured part to other parts of the body, would the inflictor be responsible as well?

Yes, the inflictor will be responsible. If a person committed a crime against another by, for instance, cutting off his finger and the injury did not get healed until the entire hand got paralysed or the victim dies as a result of that injury, the Qisas or the Diyah is applicable as the case may be.

But if a person inflicted an injury on another by cutting off his hand and the hand of the perpetrator was cut off in retaliation, and he then died as a result of that injury, he is entitled to nothing unless if the retaliation was carried out in an unjust manner such as cutting the hand off with a languid or poisonous tool. Then he must be paid compensation for the spread of the injury.

Can an injury inflicted on a part of the body be avenged before it gets healed?

It cannot be avenged before it gets healed. This is because, it is not guaranteed that the injury can spread to other parts of the body and cause damage in them. Therefore, if a victim insisted on avenging the injury inflicted on him before it got healed, and the injury later spread to other parts of his body and caused damages on them, he has no right to demand for any compensation.

Diyah

What is Diyah?

Diyah is the money paid to a person against whom a crime is committed on his body or soul.

What is its ruling?

It is lawful due to the following statement of Allah,

﴿وَدِيَةٌ مُّسَلَّمَةٌ إِلَىٰٓ أَهْلِهِۦٓ إِلَّآ أَن يَصَّدَّقُوا۟﴾

And a compensation (blood money, i.e. Diya) be given to the deceased's family, unless they remit it." (An – Nisa 4:92)

And the statement of the Prophet, "And if somebody is killed, then his closest relative has the right to choose one of the two: the blood money (Diyah) or retaliation by having the killer killed." (Recorded by Al-Bukhari and Muslim on the authority of Abu Hurayrah - may Allah be pleased with him).

Payment of Diyah is binding upon whom?

It is binding upon a person who directly or indirectly killed another. If the murder was premeditated, the Diyah should be paid from his own money; but if it is manslaughter or killing by mistake, the Diyah should be paid by his closest male relatives. This is according to the decision made by the Prophet in this case. Al-Bukhari and Muslim recorded on the authority of Abu Hurayrah - may Allah be pleased with him - who narrated, "Two women from Hudhail fought with each other and one of them hit the other with a stone that killed her and what was in her womb. The relatives of the killer and the relatives of the victim submitted their case to the Prophet who judged that the Diyah for the fetus was a male or female slave, and the Diyah for the killed woman was to be paid by the `Asaba (near relatives) of the killer."

The closest male relatives are fathers, brothers and their sons, and paternal uncles and their sons. Each of them should contribute according to his means for a period of three years until the required fund is raised. If they are able to raise the fund immediately then there is nothing wrong in that.

Who is exempted from paying Diyah?

If a father disciplined his son and the son died in the process, the father is not liable to pay any indemnity. The same rule applies to the ruler who disciplined one of his subjects, and a teacher who disciplined one of his pupils and the latter died in the process, as long as the pupil was not excessively beaten.

What is the Diyah paid in compensation for a crime committed against a soul?

If the killed person is a free Muslim, his Diyah is a hundred camels or one thousand mithqal of gold or twelve thousand silver dirhams or two hundred cows or one thousand goats. If the case is manslaughter, the Diyah is made heavy, which means a hundred camels, forty of which should be pregnant. If the killing is by mistake, there should not be heavy Diyah. This is due to the injunction of the Messenger of Allah (Peace and Blessings of Allah be upon him) "Indeed, if a person is mistakenly killed such as the one beaten with a stick or a whip and he dies as a result, the killer is liable to pay a heavy Diyah: one hundred

camels forty of which should be pregnant.” (Recorded by Ibn Majah on the authority of `Abdullah bin `Amr - may Allah be pleased with them.)

If the case is premeditated murder, the decision lies with relatives of the victim. They can ask for more than the above-mentioned Diyah because they have the prerogative of demanding for Qisas. They also have the right to forgo the entire Diyah or a part thereof.

The proof for the stipulated Diyah is the report recorded by Abu Dawud on the authority of `Umar bin Al-Khattab - may Allah be pleased with him - that he, “fixed the value for those who possessed gold at one thousand dinars, for those who possessed silver at twelve thousand (dirhams), for those who possessed cattle at two hundred cows, for those who possessed sheep at two thousand sheep, and for those who possessed suits of clothing at two hundred suits.”

Therefore, whichever of these types of Diyah that the accused presents, the relatives of the victim must accept it.

If the victim is a free Muslim woman, her Diyah is half of that of a free Muslim man. This is due to what Malik reported from Yahya bin Sa`eed from Ibn Al-Musayyab who said, “The blood-money for a woman is the same as for a man up to one third of the blood-money. Her finger is like his finger, her tooth is like his tooth, her injury, which lays bare the bone is like his, and her head wound which splinters the bone is like his.”

If the victim is a non-Muslim who lives under the protection of the Islamic state, his Diyah is half of that of a Muslim; and the Diyah of his female counterpart is half of his. This is due to the Prophet's saying, “The blood money of a disbeliever is half of that of a believer.” (Recorded by At-Tirmidhi)

If the victim was a bondman, the blood money payable to his master is exactly his value, however high it may be. This is because, he is a valued property.

If the victim was a foetus, whether male or female, the blood money payable is a male or female slave, if it was not a child of a slave and was stillborn. The proof for this is the Hadith recorded by Malik and others on the authority of Abu Hurayrah - may Allah be pleased with him -that a woman from the Hudhayl tribe threw a stone at a woman from the same tribe, and she had a miscarriage. The Messenger of Allah (Peace and Blessings of Allah be upon him) gave a judgement that a slave or slave-girl of fair complexion and excellence should be given to her as compensation.”

But if the foetus is delivered alive and dies thereafter, the ruling is that the perpetrator should be killed in retaliation or made to pay the complete Diyah.

Note: Some scholars estimated the value of a fair-complexioned and excellent male or female slave to a tenth of the Diyah of the foetus' mother. Imam Malik estimated it to be fifty Dinars or six hundred Dirhams.

What is the Diyah due on limbs?

A complete Diyah is due in the following cases:

1. Loss of sanity.

2. Loss of hearing with the loss of the two ears.

3. Loss of sight as the result of complete damage to the two eyes.

4. Loss of voice as a result of cutting off the tongue or lips.

5. Loss of smell as a result of cutting off the nose.

6. Loss of ability to perform sexual intercourse as a result of cutting off the penis or crushing the testes.

7. Loss of ability to stand up or sit down as a result of breaking the back.

The proof for this is `Amr bin Hazm's script which that the Messenger of Allah (Peace and Blessings of Allah be upon him) was reported to have ordered written that the compensation for a completely cut off nose is a full Diyah ; and that a complete Diyah is also due on cutting off of the tongue and lips, crushing of testes, cutting off of penis, breaking of backbone and gorging out of eyes.

Another proof for this is `Umar's judgment in the case of a man who was beaten by another leading to the latter's loss of hearing, vision, sexual potency and senses. `Umar - may Allah be pleased with him - ruled that the perpetrator pay a complete Diyah for each of these injuries.

A female's Diyah concerning damages of parts of the body is half of that of the male.

When must half of Diyah be paid?

1. If one of the eyes is gorged out.

2. If one of the ears is cut off.

3. If one of the hands is cut off.

4. If one of the legs is cut off.

5. If one of the lips is cut off.

6. If one of the buttocks is broken.

7. If one of the eyebrows is removed.

8. If one of the woman's breasts is cut off.

What is the compensation for cutting off a person's fingers?

Ten camels should be paid in compensation for cutting off a single finger. This is due to the Prophet's injunction, "The compensation for cutting off fingers and toes is ten camels for each finger or toe." (Recorded by At-Tirmidhi on the authority of Ibn `Abbas - may Allah be pleased with him and his father)

As for breaking another person's teeth, the compensation that the perpetrator must pay for each tooth is five camels.

Head Wound

This is a wound that a person inflicts on another person's head. The following are the five types of head wounds whose compensation is explicitly mentioned in textual proofs:

1. A head wound in which the bone is exposed. The compensation for this is five camels.

2. A head wound in which there is fracture in the skull. The compensation for this is ten camels.

3. A head wound that caused dislocation of bones. The compensation is five camels.

4. A head wound that reached the skin of the brain. The compensation is a third of the Diyah.

5. A head wound that penetrated the skin of the brain. The compensation is also a third of the Diyah.

There are other wounds for which no specific compensation is mentioned in textual proofs. They are:

1. A minor scratch that did not result in any bleeding.

2. A scratch that caused bleeding.

3. An injury that left a cut on the flesh.

4. An injury that left a deep cut in the flesh.

5. An injury that caused a deep cut in the flesh that it almost reached the bone.

The ruling concerning these five injuries, according to the scholars, is that the victim is hypothetically assumed to be a bondman. He is then quantified as sound without any impact of injury; and evaluated again as a slave whose injury has been healed but left some blemishes on him. The difference between the two values is then regarded as the compensation.

The easier method, especially in our contemporary time, is to regard the exposure of the bone as the criterion.

Injury Caused on other Parts of the Body beside the Head and Face

What is the ruling, concerning this kind of injury?

If a person inflicts an injury on another that reached the latter's bowel, the compensation due is a third of the Diyah.

If a rib is broken and then set, a camel should be paid to the victim as compensation.

How is a crime established?

If it is below murder, it is established through either of two things: confession of the perpetrator or testimony of two witnesses.

If the crime is murder, it is established through confession of the perpetrator or testimony of two witnesses, or swearing if there is a circumstantial evidence such as open enmity between the victim and the suspect.

Swearing takes places when someone is killed and the relatives of the victim accuse the one person or a group of people of killing him because of a clear enmity that was between the victim and the accused, and that it was strongly suspected that he was killed as a result of that enmity.

If there was no enmity between the victim and the accused and the murder was witnessed by one witness, since any claim concerning the blood cannot be established without the testimony of two witnesses, the testimony of one witness would then be regarded as circumstantial evidence. The male heirs of the victim would then be asked to give fifty oaths to be distributed among them, according to their share of the inheritance, that it was the accused who killed the victim. If they gave this oath, then they deserve to kill the accused in revenge for their killed relative or take blood money from him. If any of the heirs refuses to swear, then they have no right to either retaliation or compensation. Then, the accused is asked to swear that he did not kill their relative, and he is discharged and acquitted after that. The evidence for this is the Hadith recorded by Al-Bukhari, Muslim and Abu Dawud on the authority of `Abdullah bin `Abdur-Rahman bin Sahl who narrated, Sahl bin Abi Hathmah and some great men of his tribe said, `Abdullah bin `Sahl and Muhaiyisah went out to Khaibar as they were struck with poverty and difficult living conditions. Then Muhaiyisah was informed that Abdullah had been killed and thrown in a pit or a spring. Muhaiyisah went to the Jews and said, "By Allah, you have killed my companion." The Jews said, "By Allah, we have not killed him." Muhaiyisah then came back to his people and told them the story. He, his elder brother Huwaiyisah and `Abdur-Rahman bin Sahl came (to the Prophet) and he who had been at Khaibar, proceeded to speak, but the Prophet said to Muhaiyisah, "The eldest! The eldest!" meaning, "Let the eldest of you speak." So Huwaiyisah spoke first and then Muhaiyisa. Allah's Messenger said, "The Jews should either pay the blood money of your (deceased) companion or be ready for war." After that Allah's Messenger wrote a letter to the Jews in that respect, and they wrote that they had not killed him. Then Allah's Messenger said to Huwaiyisah, Muhaiyisah and `Abdur-Rahman, "Can you take an oath by which you will be entitled to take the blood money?" They said, "No." He said (to them), "Shall we ask the Jews to take an oath before you?" They replied, "But the Jews are not Muslims." So Allah's Messenger gave them one-hundred she-camels as blood money from himself. Sahl added, `When those she-camels were made to enter the house, one of them kicked me with its leg."

Hudud (Prescribed Punishments) And Its Rulings

Prescribed Punishment (Hadd) for Consuming Alcohol

What is the meaning of Hadd?

Hadd (pl. Hudud) means the limits set by Allah. Legally, it is the punishment that Allah has prescribed for certain sins.

What is the meaning of alcohol?

According to Islamic definition, alcohol is any substance that intoxicates, whatever it may be. The proof for this is the Prophet's saying, “Every intoxicant is alcohol and every alcohol is forbidden.” (Recorded by Muslim on the authority of `Abdullah bin `Umar - may Allah be pleased with him and his father)

What is the ruling, concerning drinking of alcohol?

It is forbidden to drink alcohol regardless of it being a little or a lot. This is due to Allah's injunction,

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ إِنَّمَا ٱلۡخَمۡرُ وَٱلۡمَيۡسِرُ وَٱلۡأَنصَابُ وَٱلۡأَزۡلَٰمُ رِجۡسٞ مِّنۡ
عَمَلِ ٱلشَّيۡطَٰنِ فَٱجۡتَنِبُوهُ لَعَلَّكُمۡ تُفۡلِحُونَ ٩٠ إِنَّمَا يُرِيدُ ٱلشَّيۡطَٰنُ
أَن يُوقِعَ بَيۡنَكُمُ ٱلۡعَدَٰوَةَ وَٱلۡبَغۡضَآءَ فِي ٱلۡخَمۡرِ وَٱلۡمَيۡسِرِ وَيَصُدَّكُمۡ عَن
ذِكۡرِ ٱللَّهِ وَعَنِ ٱلصَّلَوٰةِۖ فَهَلۡ أَنتُم مُّنتَهُونَ ۝

O you who believe! Intoxicants (all kinds of alcoholic drinks), and gambling, and Al-Ansab, and Al-Azlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful. Shaitan (Satan) wants only to excite enmity and hatred between you with intoxicants (alcoholic drinks) and gambling, and hinder you from the remembrance of Allah and from As-Salat (the prayer). So, will you not then abstain?” (Al MAidah 5:90-9)

The Messenger of Allah (Peace and Blessings of Allah be upon him) said, “Allah has cursed wine, its drinker, its server, its seller, its buyer, its presser, the one for whom it is pressed, the one who conveys it, and the one to whom it is conveyed.” (Recorded by Abu Dawud and Ibn Majah on the authority of `Abdullah bin `Umar - may Allah be pleased with him and his father)

Al-Bukhari also recorded on the authority of `Umar bin Al-Khattab - may Allah be pleased with him - who narrated, “During the lifetime of the Prophet there was a man called `Abdullah whose nickname was Donkey, and he used to make Allah's Messenger laugh. The Prophet lashed him because of drinking alcohol.”What is the logic reason for prohibiting intoxicants?

All intoxicants were prohibited in order to preserve the religion, mind, body and wealth of the Muslim.

What is the punishment for consuming alcoholic drinks?

If it is established that a person has consumed alcoholic substance through his own confession or testimony of two witnesses, he should be flogged eighty lashes on his back, if he is a free man; and forty lashes if he is a bondman. This difference is due to Allah's injunction concerning the punishment of a bondwoman who committed fornication or adultery:

﴿فَعَلَيْهِنَّ نِصْفُ مَا عَلَى ٱلْمُحْصَنَٰتِ مِنَ ٱلْعَذَابِ﴾

Their punishment is half that for free (unmarried) women." (An Nisa 4:25)

Based on this verse, it is analogically deducted that a bondman who consumed alcohol is given half of the punishment that a free person is given.

What are the conditions that make implementation of the Hadd mandatory?

The alcohol consumer on whom the punishment should be implemented should be a sane, adult Muslim who voluntarily consumed the intoxicant, knowing that it is forbidden. He must also be of sound health and not sick. However, being sick does not make him totally exempted from punishment. His punishment is only delayed until he gets well, after which the punishment is implemented.

If a person has been repeatedly punished for drinking alcohol and yet continues to consume it, what is the ruling?

If a Muslim repeatedly consumed alcohol and the punishment was implemented on him once, one punishment is enough. If he drinks it again, he is given the punishment each time he is found guilty, even if that happens many times.

How is the punishment implemented on a person found guilty of drinking alcohol?

He is made to sit on the ground. He is then flogged with a moderate whip eighty lashes. If it is a woman, she should be made to put on garment opaque enough to cover her and thin enough to make her feel the pain of flogging.

Notice:

Punishment for consuming alcoholic drinks should not be implemented in an extremely hot or chillingly cold weather. It should be delayed until the climate is moderate. It should also not be implemented while the accused is sick or still drunk.

Legal Punishment for Slander (Qadhf)

What is the meaning of Qadhf?

It is to wrongly accuse a person of committing adultery, fornication or sodomy.

What it is its ruling?

It is one of the major sins that Allah (SWT) has declared its perpetrator as untrustworthy and decreed a specified legal punishment for him. He says,

﴿وَٱلَّذِينَ يَرۡمُونَ ٱلۡمُحۡصَنَٰتِ ثُمَّ لَمۡ يَأۡتُواْ بِأَرۡبَعَةِ شُهَدَآءَ فَٱجۡلِدُوهُمۡ
ثَمَٰنِينَ جَلۡدَةٗ وَلَا تَقۡبَلُواْ لَهُمۡ شَهَٰدَةً أَبَدٗاۚ وَأُوْلَٰٓئِكَ هُمُ ٱلۡفَٰسِقُونَ
٤ إِلَّا ٱلَّذِينَ تَابُواْ مِنۢ بَعۡدِ ذَٰلِكَ وَأَصۡلَحُواْ فَإِنَّ ٱللَّهَ غَفُورٞ رَّحِيمٞ﴾

And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever. They indeed are the Fasiqun (liars, rebellious, disobedient to Allah). Except those who repent thereafter and do righteous deeds, (for such) verily, Allah (SWT) is Oft-Forgiving, Most Merciful." (An Nur 24:4-5)

What is the prescribed punishment for slander?

The prescribed punishment for slander is eighty lashes, and the proof is the above mentioned verse. Practically, the Messenger of Allah (Peace and Blessings of Allah be upon him) implemented this punishment on some individuals who committed slander during his time.

What is the logical reason behind prescribing a punishment for slander?

The logical reason behind that is to protect and preserve the honor of the Muslim. It is also meant to preserve the purity of society from spreading of obscenities.

What are the conditions for implementing a slander punishment?

The following conditions have to be met:

1. The slanderer should be a sane, adult Muslim.

2. The slandered should be a Muslim known for his chastity among the people.

3. The slandered must request the implementation of the punishment on the slanderer; for that is his right which he is free to request for or relinquish.

4. It should be after the slanderer failed to produce four witnesses who would testify to the correctness of the accusation.

If any of these four conditions is absent, the punishment must not be implemented.

The Prescribed Punishment for Adultery

What is adultery?

Adultery is a forbidden sexual intercourse whether it is normal or anal.

What is its ruling?

Adultery is one of the major sins after the disbelief and ascribing partners to Allah in worship. It is one of the most heinous sins. Allah declared it forbidden with the following statement:

﴿وَلَا تَقْرَبُوا۟ ٱلزِّنَىٰٓ ۖ إِنَّهُۥ كَانَ فَـٰحِشَةً وَسَآءَ سَبِيلًا﴾

And come not near to the unlawful sexual intercourse. Verily, it is a Fahishah (i.e. anything that transgresses its limits: a great sin), and an evil way (that leads one to Hell unless Allah forgives him)." (Al Isra 17:32)

A punishment is prescribed for the perpetrator of this sin, and this is Allah's command:

﴿ٱلزَّانِيَةُ وَٱلزَّانِى فَٱجْلِدُوا۟ كُلَّ وَٰحِدٍ مِّنْهُمَا مِا۟ئَةَ جَلْدَةٍ ۖ﴾

The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes." (An Nur 24:2)

He also says, in a revelation of the Qur'an, whose letters have been abrogated but whose implication is still binding: " If a married man or woman commits adultery, stone each of them as a punishment from Allah."

The Messenger of Allah (Peace and Blessings of Allah be upon him) said, "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time he is doing it." (Recorded by Al-Bukhari and Muslim on the authority of Abu Hurayrah - may Allah be pleased with him)

What is the logical reason for prohibiting illegal sexual intercourse?

Some of the logical reasons for prohibiting it are as follows: to preserve the purity of the Muslim society, to guard the honor of the Muslims and to preserve the cleanliness of their minds, and to protect the nobleness of their lineages.

What is the prescribed punishment for committing illegal sexual intercourse?

It depends on the situation of the perpetrator. If he or she is not married through a legal Islamic marriage in which seclusion and consummation took place (and has never married before), he is given a hundred lashes and sent on exiled for a year. As for a woman who is guilty of illegal sexual intercourse, she should only be exiled if it is ensured that being exiled would lead her or others away from immoral acts. This is due to Allah's command:

﴿ٱلزَّانِيَةُ وَٱلزَّانِى فَٱجْلِدُوا۟ كُلَّ وَٰحِدٍ مِّنْهُمَا مِا۟ئَةَ جَلْدَةٍ ۖ﴾

The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes." (An Nur 24:2)

From the Sunnah, the proof is the Hadith recorded by Al-Bukhari on the authority of Abu Hurayrah and Zaid bin Khalid Al-Juhani - may Allah be pleased with them - that a bedouin came and said, "O Allah's

Messenger! Judge between us, according to Allah's Laws." His opponent got up and said, "He is right. Judge between us, according to Allah's Laws." The Bedouin said, "My son was a labourer working for this man, and he committed illegal sexual intercourse with his wife. The people told me that my son should be stoned to death; so, in lieu of that, I paid a ransom of one hundred sheep and a slave girl to save my son. Then I asked the learned scholars who said, "Your son has to be lashed one-hundred lashes and has to be exiled for one year." The Prophet said, "No doubt, I will judge between you according to Allah's Laws. The slave-girl and the sheep are to go back to you, and your son will get a hundred lashes and one year exile." He then addressed somebody, "O Unais! Go to the wife of this (man) and stone her to death" So, Unais went and stoned her to death."

If the perpetrator is a bondman, he is given fifty lashes but is not exiled to avoid infringing on the right of his master.

If the perpetrator is married or has been married before, he is stoned to death. This is due to Allah's injunction, which is abrogated in letters but still valid in application, that if a married man or woman committed illegal sexual intercourse they should be stoned to death.

Practically, the Messenger of Allah (Peace and Blessings of Allah be upon him) ordered that the Ghamidite lady and Ma'iz be stoned to death. He also ordered the two Jews who committed illegal sexual intercourse to be stoned to death.

What are the conditions for carrying out the punishment?

Following conditions must be fulfilled before punishment for illegal sexual intercourse could be carried out:

1. If a man who commits illegal sexual intercourse is a Muslim, rational, mature, willingly and without coerced, according to the saying of the Prophet: The pen has been lifted from three; for the sleeping person until he awakens, for the boy until he becomes a young man and for the mentally insane until he regains sanity. '

And the Prophet said: The mistakes, forgetfulness and what they are forced to do from my nation have forgiven (lifted).

2. The crime must be clearly established by the perpetrator himself confessing while he is in his right sense and under no coercion that he committed the act or by testimony of four witnesses who would testify that they saw the perpetrator inserting his private parts into that of the female as like a collyrium stick when enclosed in its case and a rope in a well. This is due to Allah's injunction:

﴿وَٱلَّٰتِي يَأۡتِينَ ٱلۡفَٰحِشَةَ مِن نِّسَآئِكُمۡ فَٱسۡتَشۡهِدُواْ عَلَيۡهِنَّ
أَرۡبَعَةٗ مِّنكُمۡۖ﴾

And those of your women, who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them. (An Nisa 4:15)

Or through pregnancy. If the woman was asked about it and she was unable to produce any evidence that could prevent her from being punished, such as being raped or cohabited with under an ambiguous situation, or being ignorant of the unlawfulness of such intercourse. The evidence for this is the Prophet's saying concerning the woman whose husband accused her of committing adultery with another man and

she denied that. Later she gave birth to a child that strikingly resembled the man she was accused of having committed adultery with. The Messenger of Allah (Peace and Blessings of Allah be upon him) then said, “'If I were to stone to death someone without witness, I would have stoned this lady.” (Recorded by Al-Bukhari and Muslim on the authority of `Abdullah bin `Abbas - may Allah be pleased with him and his father)

3. The person guilty of illegal sexual intercourse should not recant on his confession. If he recanted before the punishment could be implemented on him by claiming that he had not committed any illegal sexual intercourse, the punishment should not be implemented on him. The evidence for this is the case of Ma'iz, when he was being stoned, he could not bear it and he fled. But the companions caught up with him and stoned him until he died. When the Prophet was informed of that he said, “Why did you not leave him alone.” (Recorded by Abu Dawud)

What is the way for carrying out the prescribed punishment for committing illegal sexual intercourse?

What is the manner of implementing the punishment on those found guilty of perpetrating illegal sexual intercourse?

A pit is dug for him up to his chest. He is then put therein and stoned to death. All this should be done in the presence of the Imam or his representative and a group of Muslims whose number should not be less than four. This is due to Allah's injunction:

﴿وَلْيَشْهَدْ عَذَابَهُمَا طَآئِفَةٌ مِّنَ ٱلْمُؤْمِنِينَ﴾

And let a party of the believers witness their punishment.” (An Nur 24:2)

The same procedure applies to the woman. It is only that she is covered so that parts of her body would not be exposed.

As for lashing, it is done in the same manner that a person found guilty of slander or consuming alcohol is lashed.

What is the prescribed punishment for sodomy?

The punishment for sodomy is stoning to death. This is due to the Prophet's injunction, “If you find anyone doing as Lot's people did (i.e. sodomy), kill the one who does it, and the one to whom it is done.” (Recorded by Abu Dawud on the authority of `Abdullah bin `Abbas - may Allah be pleased with him and his father)

The Companions - may Allah be pleased with them - have varied opinions on how people who were found guilty of committing sodomy should be killed. Some believed that they should be burnt to death while others believed that they should be stoned to death. Ibn `Abbas said, “A person found guilty of committing sodomy should be thrown down from the highest structure in the city and then stoned to death.”

What is the ruling concerning a person found guilty of having sexual intercourse with an animal?

A person found guilty of committing such a crime should be given the harshest discretionary punishment, such as lashing and imprisonment for his perverted nature. Some reports mention that he should be killed and the animals should also be killed. But none of these reports are authentic enough to stand as a proof. Therefore, the matter is left for the authorities to mete out to the culprit the discretionary and corrective punishment they find fit.

What is the prescribed punishment for a male or female slave who committed illegal sexual intercourse?

If any of them committed illegal sexual intercourse, they are only flogged, if they are married or have married before. This is due to Allah's injunction:

﴿فَعَلَيۡهِنَّ نِصۡفُ مَا عَلَى ٱلۡمُحۡصَنَٰتِ مِنَ ٱلۡعَذَابِۚ﴾

"Their punishment is half that for free women." (An Nisa 4:25)

Since death cannot be divided into halves, their punishment remains fifty lashes.

Is it permissible for a master to carry out prescribed punishment on his male or female slave?

A master can carry out the prescribed punishment on his male or female slave as he can also request the authorities to do so. The proof for this is the Hadith that Al-Bukhari and Muslim reported on the authority of Abu Hurayrah - may Allah be pleased with him - that the Messenger of Allah (Peace and Blessings of Allah be upon him) said, "If a slave-girl of one of you commits illegal sexual intercourse and it is proved beyond doubt, then her owner should lash her and should not blame her after the legal punishment. And then if she repeats the illegal sexual intercourse he should lash her again and should not blame her after the legal punishment, and if she commits it a third time, then he should sell her even for a hair rope."

The Prescribed Punishment for Theft

What is theft?

It is to secretly take a property kept in a safe place like entering a shop or a house and taking from there a garment, gold or any other valuable.

What is the ruling on theft?

Theft is one of the major sins that Allah has forbidden.

﴿وَٱلسَّارِقُ وَٱلسَّارِقَةُ فَٱقْطَعُوٓا۟ أَيْدِيَهُمَا جَزَآءًۢ بِمَا كَسَبَا نَكَٰلًا مِّنَ ٱللَّهِ ۗ وَٱللَّهُ عَزِيزٌ حَكِيمٌ﴾

And (as for) the male thief and the female, cut off (from the wrist joint) their (right) hand as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise." (Al Maidah 5:38)

The Messenger of Allah (Peace and Blessings of Allah be upon him) also cursed the perpetrator of this crime. He said, "Allah curses a man who steals an egg and gets his hand cut off, or steals a rope and gets his hands cut off." (Recorded by Al-Bukhari and Muslim on the authority of Abu Hurayrah - may Allah be pleased with him)

He also explained that a thief is not in the complete state of faith while he is engaging in theft. He said, "When a thief steals, he is not a believer at the time when he is stealing." (Recorded by Al-Bukhari and Muslim)

He made it clear that punishment for theft is one of the punishments that Allah prescribed. He said, "By Allah, if Fatimah, the daughter of Muhammad, committed theft, Muhammad would cut off her hand." (Recorded by Al-Bukhari and Muslim)

How is a theft established?

Theft is established through one of the two ways: firstly, confession from the thief that he committed the crime. The confession should be freely made without anyone forcing him to do so or under any threat. The second way to establish a theft is through the testimony of two trustworthy witnesses. If an accused person confessed that he committed theft and then recanted later on, his hand should not be cut. He must only be made to pay compensation for the stolen property. For, it is desirable to encourage the denial of culpability in theft in order to save the hand of a Muslim from being cut. What are the conditions for cutting the hand of a person found guilty of theft?

The conditions are:

1. The person found guilty of perpetrating theft must be a sane, adult person. This is due to the Prophet's saying, "The Pen has been raised from three: the one who is sleeping, until he awakens; the insane person, until he returns to his senses; and the child, until he reaches puberty." (Recorded by At-Tirmidhi and others on the authority of `Ali bin Abi Talib - may Allah be pleased with him)

2. The person found guilty of the theft should not be the parent, child, wife or husband to the owner of the stolen property. This is because all of the above mentioned have some right to the properties of each other.

3. The person found guilty of the theft should not have even the slightest - even if ambiguous - ownership in the purportedly stolen property in any way. An example is someone who is accused of stealing what he holds as a mortgage.

4. The stolen property should be a lawful item and not forbidden property, such as alcoholic drinks, intoxicants or musical instruments. The value of the stolen property must also not be less than a quarter of a dinar (gold coin). This is due to the Prophet's injunction, "The hand should be cut off for stealing something that is worth a quarter of a dinar or more." (Recorded by Al-Bukhari on the authority of `A'ishah - may Allah be pleased with her)

5. The stolen property should be kept in a secure place such as inside of a house or a shop, or within a fenced garden or inside a box.

6. It should not be snatched from the hand of its owner or forcefully taken possession of nor should it be acquired as booty. The Prophet said, "Hands of a booty collector, a property snatcher and a swindler should not be cut." (Recorded by Ahmad on the authority of Jabir bin Abdullah - may Allah be pleased with him and his father)

What must be done to a person found guilty of theft?

If a person is found guilty of committing theft, the following two things must be carried out concerning him:

1. He should be made accountable for the stolen property if it is still in his hand or if he is rich; if the property is damaged, he remains under obligation to compensate the owner.

2. His hand should be cut off, as a right due to Allah. If the cutting off the hand is not applicable due to a lack of some conditions, the owner of the property must be compensated whether the stolen property is little or great and regardless of whether the accused person is rich or poor.

How is the cutting off of the hand carried out?

The right hand of the thief is cut off from the wrist. It is recommended that the cut off hand should be hanged on the neck of the thief so that it could serve as a lesson to others.

What items, if stolen do not warrant cutting off of the hand?

It is unlawful to cut off the hand of a person accused of stealing a property that was not kept in a secure place nor stealing a property whose value is less than a quarter of a dinar, or for stealing fruits from a tree or some dates from date trees. He is only compelled to pay double the price if he took (what is more than what he immediately needed to eat) in his garment. He should also be punished with lashing.

As for what he needs to eat, there is nothing wrong in that. This is due to the Prophet's saying, "If a needy person takes some and does not take a supply away in his garment, he is not to be blamed, but he who carries any of it away is to be fined twice the value and punished, and he who steals any of it after it has been put in the place where dates are dried is to have his hand cut off if its value reaches the price of a shield." Regarding stray camels and sheep he mentioned the same as others have done. It is he said, was

asked about finds and replied, “If it is in a frequented road and a large town, make the matter known for a year, and if its owner comes, give it to him, but if he does not, it belongs to you. If it is in a place which has been a waste from ancient time, or if it is a hidden treasure (belonging to the Islamic period), it is subject to the payment of the fifth.” (Recorded by Abu Dawud on the authority of `Abdullah bin `Amr - may Allah be pleased with him and his father)

What is the ruling if the owner forgives the thief?

If the owner forgave the thief and does not sue him in court, then there is no basis for cutting off his hand. If he sued him in court and he was found guilty, then his hand should be cut off, and no intercession will be of any use to him after that. This is due to the Hadith recorded by Abu Dawud, At-Tirmidhi, Ibn Majah and An-Nasa'i on the authority of Safwan bin Abdullah, who narrated that he slept in the mosque and used his cloak as pillow. A thief came and took his cloak valued at thirty dirhams. The thief was seized and brought to the Prophet and he gave orders that his hand should be cut off. When the owner heard that he said, “Is his hand going to be cut off simply because of a cloak that is not worth more than thirty dirhams? I am selling it to him on credit!” The Messenger of Allah (Peace and Blessings of Allah be upon him) retorted, “Why did you do this before you brought him to me?” This indicates that after the judgment has been passed on person found guilty of stealing, the owner's decision to forgive the thief is of no use.

What is the ruling on intercession concerning prescribed punishments after the case has reached the authorities?

It is forbidden to engage in any intercession for the purpose of canceling or reducing prescribed punishments if the case has already been raised to the authorities. This is due to the Prophet's statement, “If anyone's intercession intervenes as an obstacle to one of the punishments prescribed by Allah, he has opposed Allah.” (Recorded by Abu Dawud on authority of `Abdullah bin `Umar - may Allah be pleased with them)

In another Hadith recorded by Al-Bukhari and Muslim, `A'ishah - may Allah be pleased with her - narrated, “The Quraish people became very worried about the Makhzumiyah lady who had committed theft. They said, “Can no one speak (in favour of the lady) to Allah's Messenger and nobody dared to do that except Usamah who was the favourite of Allah's Apostle. When Usamah spoke to Allah's Messenger, about that matter, Allah's Messenger said, `Do you intercede (with me) to violate one of the legal punishments of Allah?' Then he got up and addressed the people, saying, ‘O people! The nations before you went astray because if a noble person committed theft, they used to leave him, but if a weak person among them committed theft, they used to inflict the legal punishment on him. By Allah, if Fatima, the daughter of Muhammad, committed theft, Muhammad would cut off her hand!’"

What is the ruling concerning a person who burglarises houses and kills their inhabitants?

The punishment for a person who burglarises houses, kills their inhabitants and steals their properties is the same as that of Muharibeen (those who commit acts of violence or terrorism against individuals or treason and aggression against the Muslim state).

Penalty of the Muharibeen (Highway robbers)

Who are the Muharibeen?

They are those among the Muslims who take up arms against the people, rob travellers on highways, kill them and seize their money because of the power they possess.

What is the ruling **concerning** them?

The rulings concerning them are as follows:

1. They should be admonished and requested to repent. If they repent, their repentance will be accepted; but if they refuse to repent, war should be waged on them. And fighting against them is regarded as Jihad in Allah's Cause. If anyone from among them is killed, his killing is in vain, for his blood has become violable and no compensation is paid to his relatives. If any Muslim is killed while fighting against them, such a Muslim is a martyr according to Allah's statment:

﴿فَقَٰتِلُواْ ٱلَّتِي تَبۡغِي حَتَّىٰ تَفِيٓءَ إِلَىٰٓ أَمۡرِ ٱللَّهِۚ﴾

Then fight you (all) against the one that which outrages till it complies with the Command of Allah." (Al Hujurat 49:9)

2. If any Muharibeen is caught before he repents, then any of the prescribed penalty should be implemented on him, which are being killed, crucified, having his hand and foot cut off from opposite sides or banished from the land. This is due to Allah's injunction:

﴿إِنَّمَا جَزَٰٓؤُاْ ٱلَّذِينَ يُحَارِبُونَ ٱللَّهَ وَرَسُولَهُۥ وَيَسۡعَوۡنَ فِي ٱلۡأَرۡضِ فَسَادًا أَن يُقَتَّلُوٓاْ أَوۡ يُصَلَّبُوٓاْ أَوۡ تُقَطَّعَ أَيۡدِيهِمۡ وَأَرۡجُلُهُم مِّنۡ خِلَٰفٍ أَوۡ يُنفَوۡاْ مِنَ ٱلۡأَرۡضِۚ﴾

The recompense of those who wage war against Allah (SWT) and His Messenger (Peace and Blessings of Allah be upon him) and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land." (Al Maidah 5:33)

The Prophet implemented this punishment on the Urainis. Al-Bukhari and Muslim recorded on the authority of Anas - may Allah be pleased with him, "Some people of `Ukl or `Urainah tribe came to Madinah and its climate did not suit them. So the Prophet ordered them to go to the herd of (Milch) camels and to drink their milk and urine (as a medicine). So they went as directed and after they became healthy, they killed the shepherd of the Prophet and drove away all the camels. The news reached the Prophet early in the morning and he sent (men) in their pursuit and they were captured and brought at noon. He then ordered to cut their hands and feet (and it was done), and their eyes were branded with heated pieces of iron. They were put in Al-Harra and when they asked for water; no water was given to them." Abu Qilabah (sub-narrator from Anas) said, "Those people committed theft and murder, became infidels after embracing Islam and fought against Allah (SWT) and His Messenger (Peace and Blessings of Allah be upon him)."

Therefore, the Imam has the choice of meting out to them any of these punishments. However, some scholars believe that they should be killed if they killed; their hands and feet should be cut off from opposite sides if they robbed people of their money; and sent on exile or jailed if they had not killed or robbed until they repent.

3. If they repent before they are caught by voluntarily abandoning their crimes and surrendering themselves to the authorities, Allah's right is waivered for them but they still have to compensate their fellow humans for infringing on their rights. They are then tried for crimes they committed against the people concerning their blood or wealth. They are made to compensate for properties stolen, snatched, vandalized or plundered. They are subjected to Qisas for souls they had killed except if the relatives of their victims choose to accept compensations or forgive them. All this is permissible in the light of Allah's saying:

﴿إِلَّا ٱلَّذِينَ تَابُوا۟ مِن قَبْلِ أَن تَقْدِرُوا۟ عَلَيْهِمْ ۖ فَٱعْلَمُوٓا۟ أَنَّ
ٱللَّهَ غَفُورٌ رَّحِيمٌ﴾

Except for those who (having fled away and then) came back (as Muslims) with repentance before they fall into your power; in that case, know that Allah is Oft-Forgiving, Most Merciful." (Al Maidah 5:34)

There is nothing wrong in the Imam paying the blood money on their behalf or undertaking to compensate for the money they had snatched if the money is no longer in their possession.

Ahl Al-Baghy

Who are Ahl Al-Baghy?

They are a group of armed men who revolt against the authority relying on a reasonable justification such as accusing the Imam of disbelief, perversion or injustice. As a result of any of these assumptions, they form an armed group in order to revolt against him and not to obey him.

What are the major rulings concerning Ahlul-Baghy?

1. The Imam should write to them and ask them of the reasons for their revolt against him. If they mention an injustice done to them or to others, the Imam should correct it. If their revolt is a result of some misconceptions, he removes them by explaining the truth to them with his proofs. If they comply with the truth, he accepts their compliance, and if they insist on their revolt, the entire Muslim community should declare war against them. This is due to Allah's statement:

﴿وَإِن طَآئِفَتَانِ مِنَ ٱلْمُؤْمِنِينَ ٱقْتَتَلُوا۟ فَأَصْلِحُوا۟ بَيْنَهُمَا ۖ فَإِنۢ بَغَتْ
إِحْدَىٰهُمَا عَلَى ٱلْأُخْرَىٰ فَقَٰتِلُوا۟ ٱلَّتِى تَبْغِى حَتَّىٰ تَفِىٓءَ إِلَىٰٓ أَمْرِ ٱللَّهِ ۚ﴾

And if two parties or groups among the believers fall to fighting, then make peace between them both. But if one of them outrages against the other, then fight you (all) against the one which outrages till it complies with the Command of Allah." (Al Hujurat 49:9)

2. It is not lawful to fight them in a manner that could exterminate them such as through aerial bombing or heaving destructive weapons. The purpose of fighting them is only to weaken and force them into submission.

3. Their children and women should not be killed and their properties should not be confiscated.

4. The wounded among them should not be exposed to more harm. The captives among them should not be killed nor should those among them who flee be pursued and killed. This is due to the statement of `Ali - may Allah be pleased with him - during the Battle of the Camel, "The fleeing fighter and the wounded should not be killed; and whoever stays behind closed doors is secure."

5. At the end of the war and after the defeat of the rebels, they should not be killed in retaliation for those they have killed during the war. Nothing should be requested from them except repentance and return to the truth. This is due to Allah's statement:

﴿فَإِن فَآءَتْ فَأَصْلِحُوا۟ بَيْنَهُمَا بِٱلْعَدْلِ وَأَقْسِطُوٓا۟ ۖ إِنَّ ٱللَّهَ يُحِبُّ ٱلْمُقْسِطِينَ﴾

Then if they comply, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are equitable." (Al Hujurat 49:9)

What is the ruling if two groups of Muslims are fighting each other?

If there is an unjustifiable war between two groups of Muslims as a result of tribalism, or the war is over wealth or position, both groups are unjust. Each of them must make compensation for whatever damages

it caused to the other. But if one of them is upon the truth and the other is the transgressor, then the following verse is applied to both:

﴿وَإِن طَآئِفَتَانِ مِنَ ٱلْمُؤْمِنِينَ ٱقْتَتَلُوا۟ فَأَصْلِحُوا۟ بَيْنَهُمَا ۖ فَإِنۢ بَغَتْ إِحْدَىٰهُمَا عَلَى ٱلْأُخْرَىٰ فَقَـٰتِلُوا۟ ٱلَّتِى تَبْغِى حَتَّىٰ تَفِىٓءَ إِلَىٰٓ أَمْرِ ٱللَّهِ ۚ فَإِن فَآءَتْ فَأَصْلِحُوا۟ بَيْنَهُمَا بِٱلْعَدْلِ وَأَقْسِطُوٓا۟ ۖ إِنَّ ٱللَّهَ يُحِبُّ ٱلْمُقْسِطِينَ﴾

And if two parties or groups among the believers fall to fighting, then make peace between them both. But if one of them outrages against the other, then fight you (all) against the one that which outrages till it complies with the Command of Allah. Then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are equitable." (Al Hujurat 49:9)

Apostate

Who is an apostate?

An apostate is someone who renounced Islam for other religions or for atheism.

What is the ruling concerning an apostate?

He should be asked to return to Islam within three days and must be compelled to do so. If he returns to Islam, then he is left alone. But if he refuses he should be killed in line with the Islamic prescribed punishment. The Messenger of Allah (Peace and Blessings of Allah be upon him) said, "Whoever changed his Islamic religion, then kill him." (Recorded by Al-Bukhari on the authority of `Ali bin Abi Talib - may Allah be pleased with him)

Al-Bukhari and Muslim also reported on the authority of `Abdullah bin Mas`ud - may Allah be pleased with him - that the Prophet said, "The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle cannot be shed except in three cases: In Qisas for murder, a married person who commits illegal sexual intercourse, and the one who reverts from Islam (apostate) and leaves the Muslims."

What is the ruling concerning an apostate after he has been killed?

He should not be washed neither should funeral prayer be performed on him. He should also not be buried in the Muslim cemetery. His estate should not be inherited by his heirs. It should rather be regarded as a booty that should be spent on the general welfare of the Muslims. This is due to Allah's statement,

﴿وَلَا تُصَلِّ عَلَىٰٓ أَحَدٖ مِّنۡهُم مَّاتَ أَبَدٗا وَلَا تَقُمۡ عَلَىٰ قَبۡرِهِۦٓۖ إِنَّهُمۡ
كَفَرُواْ بِٱللَّهِ وَرَسُولِهِۦ وَمَاتُواْ وَهُمۡ فَٰسِقُونَ﴾

And never (O Muhammad) pray (funeral prayer) for any of them (hypocrites) who dies, nor stand at his grave. Certainly they disbelieved in Allah (SWT) and His Messenger (Peace and Blessings of Allah be upon him), and died while they were Fasiqun (rebellious, - disobedient to Allah (SWT) and His Messenger (Peace and Blessings of Allah be upon him))." (At Tawbah 9:84)

What statements and deeds remove a person from the fold of Islam?

They are:

1. Insulting Allah or insulting any of His messengers or angels.

2. Denying Allah's oneness in His Lordship and right to be worshipped, denying the messengership of any of His messengers or claiming or believing that there is a prophet after Muhammad.

3. Denying any of the obligations of Islam that are agreed upon such as Salah, Zakah, fasting, Hajj, dutifulness to parents and Jihad.

4. Regarding as permissible, things that are clearly established in the religion as forbidden such as illegal sexual intercourse, consumption of intoxicants, theft, killing innocent souls or practicing magic.

5. Denying any Surah, verse or a letter in the Book of Allah.

6. Denying any of the Attributes of Allah, such as His being Ever Living, Omniscient, All-Hearing, All-Seeing and Most Merciful.

7. Mocking or disdaining any aspect of the religion, whether it is obligatory or voluntary; throwing a copy of the Qur'an in the dirt, stepping on it or humiliating it.

8. Holding that there is no resurrection, punishment or reward on the Day of Resurrection, or believing that the punishment and bliss of the Hereafter are only abstract.

9. Believing that saints are superior to the prophets or that some pious people are exempted from performing acts of worship.

The proof for all the above is the consensus of the Muslims; and before that the following statement of Allah:

﴿قُلْ أَبِٱللَّهِ وَءَايَٰتِهِۦ وَرَسُولِهِۦ كُنتُمْ تَسْتَهْزِءُونَ ۝٦٥ لَا
تَعْتَذِرُوا۟ قَدْ كَفَرْتُم بَعْدَ إِيمَٰنِكُمْ﴾

Say: Was it at Allah (glorified and exalted be He), and His Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) and His Messenger (peace be upon him) that you were mocking. Make no excuse; you disbelieved after you had believed." (At Tawbah 9:65-66)

This verse indicates that whoever mocks Allah or any of His attributes or His law or His Messenger has disbelieved.

What is the ruling concerning a person who renounces Islam?

As earlier mentioned, the ruling concerning whoever becomes a disbeliever for the reasons mentioned above is that he should be given three days within which he should repent. If he fails to repent within this period, he should be killed as an apostate. After his execution, he should not be washed neither should funeral prayer be performed on him. He should also not be buried in the Muslim cemetery.

As for the one who insulted Allah or His Messenger, some scholars are of the view that he should be executed instantly without giving him an option of repentance. Other scholars believe that he also should be given a period of three days within which he should repent and testify that there is no deity worthy of being worshipped except Allah and that Muhammad is His servant and Messenger. He should ask Allah for forgiveness and return to Him in repentance.

What is the ruling concerning a person who is forced to utter a statement of disbelief in Allah?

If a person is forced to utter a statement of disbelief while his heart solidly believes in Allah, there is nothing on him. This is due to Allah's statement:

﴿إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُۥ مُطْمَئِنٌّۢ بِٱلْإِيمَـٰنِ﴾

Except him who is forced thereto and whose heart is at rest with Faith." (An Nahl 16:106)

Az-Zindiq

Who is a Zindiq?

A zindiq is someone who pretends to be a Muslim but is inwardly a disbeliever. Such a person disbelieves in Resurrection or in the messengership of our Prophet Muhammad. Nor does he believe that the Qur'an is Allah's Word. His inability to publicly pronounce his belief could be due to fear or weakness.

What is the ruling concerning a zindiq?

Whenever his situation is discovered, he should be executed in line with the penalty that Islam has prescribed. After his death, he should not be washed neither should funeral prayer be performed on him. He should also not be buried in the Muslim cemetery.

Sorcerer

Who is a sorcerer?

A sorcerer is someone who practices magic and sorcery.

What is the ruling?

If the magic or sorcery that he practices or the words he uses are utterances that indicate disbelief in Allah, then he should be killed.

If his actions or utterances do not indicate disbelief in Allah, he should only be given discretionary punishment and asked to refrain from such actions and utterances. If he insists, then he should be killed. Some scholars say: Generally, sorcery or magic inevitably involves deeds and utterances of disbelief. This is due to the generality of Allah's statement:

﴿وَمَا يُعَلِّمَانِ مِنْ أَحَدٍ حَتَّىٰ يَقُولَآ إِنَّمَا نَحْنُ فِتْنَةٌ فَلَا تَكْفُرْ﴾

But neither of these two (angels) taught anyone (such things) till they had said, "We are only for trial, so disbelieve not (by learning this magic from us)." (Al Baqarah 2:102)

And Allah's statement:

﴿وَلَقَدْ عَلِمُواْ لَمَنِ ٱشْتَرَىٰهُ مَا لَهُۥ فِى ٱلْءَاخِرَةِ مِنْ خَلَٰقٍ﴾

And indeed they knew that the buyers of it (magic) would have no share in the Hereafter." (Al Baqarah 2:102)

Tarikus-Salat (One Who Abandons Prayer)

When is a person regarded as someone who has abandoned prayer?

It is when a Muslim abandons performing the five obligatory prayers out of negligence or lack of belief in their obligatory status.

What is the ruling concerning such a person?

The ruling concerning someone who abandons the prayers is that he is commanded repeatedly to observe them and is given respite to do so till the very end of the prescribed necessity period of that prayer. If he refuses to perform the prayer, then the prescribed penalty, which is execution, is carried out on him. This is due to Allah's injunction:

﴿فَإِن تَابُوا۟ وَأَقَامُوا۟ ٱلصَّلَوٰةَ وَءَاتَوُا۟ ٱلزَّكَوٰةَ فَإِخْوَٰنُكُمْ فِى ٱلدِّينِ ۗ﴾

But if they repent, perform As-Salat (Iqamat-as-Salat) and give Zakat, then they are your brethren in religion." (At Tawbah 9:11)

Al-Bukhari and Muslim recorded on the authority of `Abdullah bin `Umar - may Allah be pleased with him and his father - that the Messenger of Allah (Peace and Blessings of Allah be upon him) said, "I have been ordered (by Allah) to fight against the people until they testify that none has the right to be worshipped but Allah and that Muhammad is Allah's Apostle, and offer the prayers perfectly and give the obligatory charity, so if they perform all of that, then they save their lives and property from me except for Islamic laws and then their reckoning (accounts) will be done by Allah."

What is the ruling concerning a person who denies a matter that is known by necessity as part of the religion?

If a person apostatises by denying a matter that is known by necessity as part of the religion, his repentance will not be reckoned with until he affirms his belief in that matter, in addition to his express utterance of two statements of testimony and asking Allah for forgiveness.

Discretionary Punishment (Ta'zir)

What is Ta`zir

Discretionary punishment can be flogging, rebuking, sanction or exiling (or even execution).

What is the ruling of discretionary punishment?

Discretionary punishment is applied in crimes for which the Qur'an or the Sunnah did not prescribe any explicit punishment or atonement, such as stealing a property whose value is below a quarter of dinar, touching or kissing an alien woman, insulting a Muslim with expressions that are less grievous than slandering or beating him without leaving any injury on him.

What are the main regulations concerning discretionary punishment?

1. If it is lashing with a whip, it should not be more than ten (at a time). This is due to injunction of Allah's Messenger, "No person should be flogged more than ten lashes except in one of the punishments prescribed by Allah." (Recorded by Al-Bukhari and Muslim)

2. The judge should exercise Ijtihad in awarding discretionary punishment by giving consideration to each situation. If mere rebuke will suffice in deterring a violator, then he should restrict the punishment to that. If jailing a violator for one day and one night is enough, he should not then award a stricter punishment. If a small fine is sufficient, then he should not award a heavy fine. This is because, the purpose for discretionary punishment is to discipline and not to hurt. The Messenger of Allah (Peace and Blessings of Allah be upon him) would often scold his Companions when they erred. An example of this can be found in a Hadith recorded by Al-Bukhari and Muslim on the authority of Abu Dharr Al-Ghifari - may Allah be pleased with him - who narrated, "I abused a person by calling his mother with bad names. The Prophet said to me, 'O Abu Dhar! Did you abuse him by calling his mother with bad names? You still have some characteristics of ignorance.'"

Another example of this is the command issued by the Prophet, "If you find anyone buying or selling in the mosque, say to him: may Allah not let you profit from your trade!" (Recorded by At-Tirmidhi and others on the authority of Abu Hurayrah - may Allah be pleased with him)

He also commanded that the following should be said to a person who announces in the mosque that an animal of his is missing: "May Allah not return your lost animal to you!"

In using a sanction or boycott as a discretionary punishment, the example of this is the case of three men who stayed away from participating in Jihad without any acceptable excuse. The Prophet did not do more than ordering that they should be boycotted. He also commanded that effeminate men should be exiled from Madinah. He commanded that a man be jailed for one day and one night for engaging in suspicious activities; among other discretionary punishments authentically reported that he awarded and whose purpose is to instruct and discipline.

Judicial Decisions and Testimonies

Al-Qada' (Judicial Decision)

What is the meaning of a Judicial Decision?

It is to explain and implement the rules of the Shari'ah.

What is its ruling?

It is one of the collective obligations. The Muslim ruler should appoint at each town under his control a judge who would explain the rules of the Shari`ah to the people and make them abide by them.

Describe the Judicial position?

Judicial position is one of the most crucial and most important positions. Anybody who assumes this position is acting on behalf of Allah on the earth and as a successor of His Messenger. That is why the Prophet issued a warning concerning this position and called the people's attention to its seriousness with his statement, "A person who is appointed as a judge among the people is like someone who has been slaughtered without a knife." (Recorded by Ahmad and Abu Dawud on the authority of Abu Hurayrah - may Allah be pleased with him)

Abu Dawud recorded on the authority of Buraidah bin Al-Hasib - may Allah be pleased with him - that the Messenger of Allah (Peace and Blessings of Allah be upon him) said, "Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell."

`Abdullah bin Samurah - may Allah be pleased with him - narrated that the Messenger of Allah (Peace and Blessings of Allah be upon him) told him, "O `Abdur-Rahman! Do not seek to be a ruler, for if you are given authority on your demand then you will be held responsible for it, but if you are given it without asking (for it), then you will be helped (by Allah) in it. If you ever take an oath to do something and later on you find that something else is better, then you should expiate your oath and do what is better." (Recorded by Al-Bukhari and Muslim)

Who should not be appointed as a judge?

Any person who seeks to be appointed a judge or who is keen on getting the position should not be appointed. This is because, judicial position is a heavy burden and a great responsibility. It is only sought by someone who is ignorant of its importance, is likely to betray its trust and not ready to fulfill its obligations, thereby causing an indescribably great corruption in religion, in the land and among the people. That is why the Messenger of Allah (Peace and Blessings of Allah be upon him) said, "We do not assign the authority of ruling to those who ask for it or to those who are keen to have it." (Recorded by Al-Bukhari and Muslim on the authority of Abu Musa Al-Ash'ari - may Allah be pleased with him)

What are the conditions that should be fulfilled by a candidate of a judicial position?

He should possess the following qualities: He should be a Muslim, sane, adult, free from bondage, knowledgeable of the Qur'an and the Sunnah, well-informed about the decisions he makes, just and able to see, hear and talk.

What are the etiquettes of a judge?

The person appointed to a judicial position must abide by the following etiquettes:

He should be strong but not violent, and soft but not weak so that no transgressor would seek to gain any favor from him and no wronged person would have fear of getting justice. He should be patient without degrading himself so that no uncouth party in the lawsuit would dare disrespect him. He should exercise deliberateness without resorting to delay or negligence. He should be wise and insightful without being self-admiring or treating others with disdain.

His court should be in the center of the town and it should be spacious enough to accommodate all the parties and the witnesses.

In his court, gazes, looks and observations, he should treat all the contending parties with equality and fairness without favoring one party over the other. His court should be attended by the scholars of Fiqh and those who are well-versed in the Qur'an and the Sunnah so that he could consult them on any complex case.

What are the things a judge should avoid?

There are things a judge should avoid among which are as follows:

1. A judge should not issue judgments while he is in a state of anger, or under the influence of an illness, hunger, thirst, heat, cold, boredom or laziness. This is due to the Prophet's injunction, “None of you should pass judgment between two contending persons while he is in the state of anger.” (Recorded by Muslim)

2. He should avoid passing judgment in the absence of witnesses.

3. He should not pass judgment in a case that involves himself or any of those in favor of whom his testimony is not legally accepted such as his father, child or wife.

4. He should never accept a bribe in any form. This is due to the Prophet's statement, “May Allah curse the giver and taker of bribe in judicial cases.” (Recorded by Ahmad and Abu Dawud on the authority of `Abdullah bin `Umar - may Allah be pleased with him and his father)

5. He should never accept any gift from any person who did not use to give him gifts before he was appointed as a judge. This is due to the Prophet's statement, “If we employ anyone to perform a job and we give him a wage, whatever he receives after that is an unlawfully acquired wealth.” (Recorded by Abu Dawud on the authority of Buraidah - may Allah be pleased with him)

What are the most important functions of a Judge?

1. To settle disputes between factions through binding judicial decisions or peace-making that will be pleasing to the factions when there are contradictions in evidences or ambiguity or weakness of proofs.

2. To subdue the oppressors and liars, to support the oppressed and to ensure that rights are given to whom they are due.

3. To implement the prescribed punishments and give judicial decisions concerning blood and injuries.

4. To look into issues of marriage, divorce, maintenance and the like.

5. To oversee the properties of those who are not legally obliged such as orphans and the insane.

6. To see to the public interests such as roads and other amenities.

7. To promote the virtues and ensure that people abide by it, and to prevent the vice and remove its effects.

8. Leading people in Jumu`ah and `Eid prayers.

How does a judge make decisions?

The tools that the judge uses to ensure that rights are given to whom they are due are four:

1. Confession: This is when an accused admits the truthfulness of the charges level against him.

2. The proof and witnesses: This is due to the Prophet's injunction, "The plaintiff must produce the evidence and (if the plaintiff fails to produce any evidence) then the defendant's swearing to an oath will be accepted as true." (Recorded by Al-Bayhaqi)

In another Hadith, recorded by Al-Bukhari and Muslim on the authority of `Abdullah bin Mas`ud - may Allah be pleased with him - who narrated, "There was a dispute between me and another person in regard to a well. We referred this dispute to the Messenger of Allah (Peace and Blessings of Allah be upon him). Upon this he remarked, `Either (you should produce) two witnesses (to support your contention) or his oath (would be accepted as valid)."

The least number of witnesses is two. If it is impossible to produce two witnesses, then a witness and an oath will suffice. This is due to the Hadith recorded by Muslim and Abu Dawud on the authority of Ibn `Abbas - may Allah be pleased with him and his father - that the Messenger of Allah (Peace and Blessings of Allah be upon him) pronounced judgment on the basis of an oath and a witness (by the plaintiff).

3. Oath: This is due to the Prophet's injunction, "The plaintiff must produce the evidence and (if the plaintiff fails to produce any evidence) then the defendant's swearing to an oath will be accepted as true." If the plaintiff is unable to produce evidence in support of his case, the defendant is asked to swear to an oath that he is not in the wrong, after which he is declared innocent.

4. If the defendant refuses to swear, the judge can issue him a warning such as: "If you swear to an oath, you will be set free but if you refuse to swear, judgment will be passed against you." If he still refuses, then the judge should pass judgment against him. However, Imam Malik is of the view that in case of the defendant's refusal to swear to an oath, the oath is returned to the plaintiff. If the plaintiff takes

the oath, then the judgment is passed in his favor. This is the safest method and the better way to free oneself from obligations.

What is the manner of delivering judgment?

If two contending parties come to him, he makes both of them sit down in front of him. He then asks: “Who is the plaintiff?” If he keeps quiet until one of them starts presenting his case, there is nothing wrong in that. After the plaintiff has presented his case, the judge then asks the defendant: “What is your response to this claim?” If the defendant affirms what the plaintiff claims, the judge then delivers judgement accordingly. But if he contradicts the plaintiff, the judge asks him (the plaintiff) to produce his evidence. If he produces the evidence, then the judgement is passed in his favor in the light of that evidence. If he requests to be given a period of time to produce the evidence, his request is granted. If the plaintiff does not have any evidence, then the defendant is asked to swear to an oath that the plaintiff is lying. If he swears to this oath, he is discharged and acquitted. If he refuses to swear, he should be warned that judgement would be passed against him if he persists in his refusal. If he still refuses, then the judgement is passed in favour of the plaintiff. However, it is recommended that the oath is returned to the plaintiff before the judgment is delivered in his favor. This is due to a Hadith recorded by Muslim on the authority of Wa'il that there came a person from Hadramaut and another one from Kindah to the Messenger of Allah (Peace and Blessings of Allah be upon him). The one who had come from Hadramawt said, “Messenger of Allah (Peace and Blessings of Allah be upon him), only this man has appropriated my land which belonged to my father.” The one who had come from Kindah contended. “This is my land and is in my possession, I cultivate it. There is no right for him in it.” The Messenger of Allah (Peace and Blessings of Allah be upon him) said to the Hadramite, “Have you any evidence (to support you)?” He replied in the negative. The Prophet said, “Then your case is to be decided on his oath.” He (the Hadramite) said, “Messenger of Allah (Peace and Blessings of Allah be upon him), he is a liar and cares not what he swears and has no regard for anything.” Upon this he (the Messenger of Allah (Peace and Blessings of Allah be upon him)) remarked, “For you then there is no other help to it. He (the man from Kindah) set out to take an oath. When he turned his back the Messenger of Allah (Peace and Blessings of Allah be upon him) observed, “If he took an oath on his property with a view to usurping it, he would certainly meet his Lord in a state that He would turn away from him.”

What is the ruling if the judge knows about the righteousness of the witness?

If the judge is aware about the righteousness of the witness, he delivers judgment in the light of the testimony given by that witness.

Can a judge rule depending on what he knows personally?

The judge should not rule according to what he personally knows. He should only rule according the evidence presented before him to avoid being accused of being partial and unfair.

Can a judgment be passed against someone who is not present in court, but not on a journey?

If a claim is made against someone who is present and not on a journey, he should be brought before the judge. The judgment should not be delivered against him in his absence unless he has appointed someone to represent him in court.

Is a judge's memo to another judge accepted?

Yes, a judge's memo to another judge is accepted in cases that do not involve the prescribed punishments and if it is witnessed by two witnesses.

Should a judge hear a case in which the plaintiff has not clarified his claim?

The judge should not hear a case in which the plaintiff has not clarified his claim. For instance, if a plaintiff says, “So and so owes me such and such”, or “I think that so and so owes me such and such”, the case should not be heard until he explicitly mentions the thing and unequivocally declares that the defendant owes the claimed property.

Can a decision of a judge make a matter permissible or unlawful?

A judge's decision does not apparently make anything permissible or unlawful. This is due to the Prophet's statement, “I am only a human being, and you people have disputes. Maybe someone amongst you can present his case in a more eloquent and convincing manner than the other, and I give my judgment in his favor according to what I hear. Beware! If ever I give (by error) somebody something of his brother's right then he should not take it as I have only given him a piece of Fire.” (Recorded by Al-Bukhari and Muslim on the authority of Umm Salamah - may Allah be pleased with her)

What is the ruling if two evidences contradict each other?

If two evidences contradict each other and there is no way to give one of them preponderance over the other, the claimed property is divided between the two contending parties. The Messenger of Allah (Peace and Blessings of Allah be upon him) ruled this way in a case.

Testimonies

What is the meaning of Testimony?

It is when a person truly gives account of what he saw or heard.

What is the ruling concerning bearing testimony?

Bearing testimony, as giving it, is a collective obligation. This is due to Allah's injunction:

﴿وَٱسْتَشْهِدُوا۟ شَهِيدَيْنِ مِن رِّجَالِكُمْ ۖ فَإِن لَّمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَٱمْرَأَتَانِ﴾

And get two witnesses out of your own men. And if there are not two men (available), then a man and two women." (Al Baqarah 2:282)

Allah (SWT) also says:

﴿وَلَا تَكْتُمُوا۟ ٱلشَّهَـٰدَةَ ۚ وَمَن يَكْتُمْهَا فَإِنَّهُۥٓ ءَاثِمٌ قَلْبُهُۥ ۗ﴾

And conceal not the evidence for he, who hides it, surely his heart is sinful." (Al Baqarah 2:283)

Zaid bin Khalid al-Juhani reported Allah's Messenger as saying, "Should I not tell you of the best witnesses? He is the one who produces his evidence before he is asked for it." (Recorded by Muslim)

What are the conditions that must be fulfilled by a witness?

A witness should be Muslim, sane, adult, and righteous. He should not be among those whose testimony is not accepted, such as a husband giving testimony in favor of his wife or vice versa, or a person who stands to benefit in the case, or testimony of an enemy against his enemy. This is due to the Prophet's injunction, "The testimony of a deceitful man or woman, of an adulterer and adulteress, and of one who harbours rancour against his brother is not allowable." (Recorded by Abu Dawud on the authority of Abdullah bin Amr bin Al-`s - may Allah be pleased with him and his father)

What are main regulations, concerning giving testimony?

1. The witness should not testify except to what he certainly knows through hearing or seeing. `Abdullah bin `Abbas - may Allah be pleased with him and his father - narrated that the Messenger of Allah (Peace and Blessings of Allah be upon him) was asked about testimony. He asked the questioner, "Do you see the sun?" The man answered in the affirmative. The Prophet then said, "You should testify to what is as clear as the sun or else keep quiet."

2. It is permissible to give testimony over another witness' testimony if it is difficult for the other witness to attend the court proceeding due to his not being available, indisposed or dead. That is if it is impossible to arrive at a decision in the case without such testimony.

3. The witness needs the attestation of two righteous men who would attest to his integrity, if his integrity is not obvious. As for a witness who is obviously known to be pious, he does not need anyone's attestation.

4. If two men attest to the integrity of a witness and another two men disparage the same person, preponderance is given to the opinion of the disparagers because that is safer.

5. The person who gave false testimony must be punished as a deterrent to him and others.

What are the major kinds of testimonies?

1. Testimony in accusation of illegal sexual intercourse: In this case, providing four witnesses is mandatory. This is due to Allah's injunction:

﴿فَٱسْتَشْهِدُوا۟ عَلَيْهِنَّ أَرْبَعَةً مِّنكُمْ﴾

Take the evidence of four witnesses from amongst you against them." (An Nisa 4:15)

2. In other cases besides illegal sexual intercourse, two pious witnesses are enough.

3. In testimony regarding financial matters, testimony of a man and two women is sufficient. This is due to Allah's statement:

﴿فَإِن لَّمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَٱمْرَأَتَانِ﴾

And if there are not two men (available), then a man and two women." (Al Baqarah 2:182)

4. In testimony concerning judicial matters, the minimum requirement is a sworn oath and a witness.

5. In matters concerning pregnancy, menstruation and other things that are only known by women, testimony of two women is sufficient.

Al-Iqrar (Confession)

What is confession?

It is for a person to admit that he owes an obligation to another like saying, for example, "I owe Zaid fifty thousand dirham," or "such and such property belongs to so and so."

Whose confession is accepted?

Confession is accepted from a sane and adult person. Confession of a minor, an insane person or a coerced person is not acceptable. This is because, they are not legally obligated. The Messenger of Allah (Peace and Blessings of Allah be upon him) said, "The Pen has been raised from three: the one who is sleeping, until he awakens; the insane person, until he returns to his senses; and the child, until he reaches puberty." (Recorded by At-Tirmidhi and others on the authority of `Ali bin Abi Talib - may Allah be pleased with him).

The Messenger of Allah (Peace and Blessings of Allah be upon him) also said, "Allah has excused my followers from being accountable for what they did out of mistake, forgetfulness or what they are coerced to do."

What is the ruling concerning confession?

The ruling concerning confession is that it is binding. If a sane and adult person out of his own volition admits that a property belongs to someone, his confession should be binding. This is due to the Prophet's command concerning a married woman who was accused of committing illegal sexual intercourse, "If she confesses then stone her." (Recorded by Al-Bukhari and Muslim) With this statement, the Messenger of Allah (Peace and Blessings of Allah be upon him) regarded her confession binding by implementing the prescribed punishment on her.

What is the ruling concerning a bankrupt person's confession?

If a bankrupt person or a person who has been declared incompetent to dispose of his own wealth admits bankruptcy, such confession would not be binding. As for the bankrupt person, his confession could be spurred by his jealousy of his debtors. As for the person who has been declared incompetent to dispose of his own wealth, if he admits bankruptcy, such admission would mean that he had not been declared incompetent. Therefore, each of them should remain under their respective obligations and should fulfill them as soon as they are able to.

What is the ruling on the confession of a sick person who is dying?

Confession of a sick person who is dying in favor of an heir is not acceptable without evidence for fear that such a testimony might be biased. For example, if a dying person says, "I confess that my child so and so has such and such with me", the confession would not be accepted for fear that he might be biased towards that child against his other children. The proof for lack of acceptability of such a confession is the Prophet's injunction, "Nothing should be willed to an heir." This is because, such a confession from the dying person is like bequeathal and the above-mentioned injunction from the Prophet clearly prohibits bequeathing anything to an heir, without the approval of other heirs, as long as the dying person has provided no evidence to support his confession. Allah (SWT) knows best.